S. B. CIVIL REVISION PETITION NO.158/2007
(VIRENDRA BHUSHAN V. RAJENDRA KUMAR VERMA)

DATE OF ORDER :::: 30-05-2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.J.Gehlot, for Petitioner.

REPORTABLE Heard learned counsel for the petitioner.

This revision, in fact transfer petition, has been filed by the defendant in the Civil Original Case No.70/98 seeking transfer of above case from the Court of Additional Civil Judge No.3, Jodhpur to any other Court.

According to the learned counsel for the petitioner, he sought time in trial Court for cross-examination of plaintiff's witnesses because of his personal sickness as he was suffering from fever, but the Court did not adjourn the matter and the Court observed that the Court will not adjourn the case on any ground and the learned Judge below lost his temper and made some observation from which it is clear that now, the petitioners defendants has no chance of getting justice from the Judge who may loose his temper and pass adverse order against petitioner.

According to the learned counsel for the petitioner, the petitioner sought adjournment in the trial Court because the

counsel was sick, but the prayer was refused by the Court without any reason. The counsel for the petitioner thereafter submitted application in writing before the trial Court and also submitted transfer petition before the Court of the District Judge, Jodhpur. The comments were sought by the learned District Judge from the Presiding Officer, but before sending the comments, the plaintiff's evidence was closed by the Presiding Officer of the Court and thereby denied cross-examination of plaintiff's witnesses. Learned counsel for the petitioner submits that in view of the fact mentioned in the transfer petition, copy of which is placed on record, as well as the facts mentioned in this transfer application, it is clear that the petitioner has every reason to believe that he will not get justice from that Court.

It is also submitted that even the learned District Judge also while rejecting petitioner's transfer petition observed that during the course of events, it appears that the learned Judge of the court below took a strong attitude. Learned counsel for the petitioner submits that if the Court can loose tempter and take a strong view in such situation, then the Court can decide the case of the petitioner as per his prejudice. Learned counsel for the petitioner relied upon the judgment of this Court delivered in the case of D.K.Parihar v. Union of India, AIR 2005 Rajasthan-171.

I considered the submissions of the learned counsel for the

petitioner and perused the judgment. It appears that the learned District Judge perused all the facts of the case and after going through all the order-sheets of the Civil Original Suit of trial Court, which was instituted in the year 1997, and where the plaintiff's evidence was at cross-examination stage since the year, 2005 and the plaintiff's witnesses were not cross-examined till 7th February, 2007, observed that if there were too many adjournments in the case, then the Court took strong view because of the facts of the case.

There may be some unfortunate events in the Court during the course of the proceedings and that may be because of the reason of development of reasons like the case was got adjourned by the counsels of any of the party again and again and ultimately situation may go beyond the control of a very cool and calm judicial officer, then there may be reaction of the court as well as from the side of the advocates. But, that by itself cannot be a ground for transferring the case from one Court to another Court. This Court has full faith in the bar as well as in the presiding officers of the Courts that these types of some incidents will not affect the merit of any case and after not only a day or two days, but within few minutes only, the matter will cool down in the Court. This is common knowledge that whenever time is sought by one advocate, because of his personal reason then that is not on false ground. Normally other

advocate will not oppose the adjournment when adjournment is sought by advocate due to his personal reason. This is because of the reason that one advocate is in better position to know the real problem of the other advocate who is seeking adjournment bona fidely then, in that situation, the Court can believe the bar and may adjourn the case. Despite this fact that the Court is often blamed by others, not conversant with the working in Courts, the Court proceedings are running smoothly barring a few incidents, without any cuzzles between the bar and the Bench and because of this reason the disposal of case in Indian Courts is highest in the world. This Court can say that the litigants are not put to loss because of this adjustment, otherwise the consequence can be only multiplication of the court proceedings by passing adverse order resulting in appeals or revisions or review, writs against those orders and reversal of those orders of the subordinate Courts and again start of the case from the stage from where the order was passed by the Subordinate Court, because of unnecessary adamency. In this case, the petitioner had to submit transfer petition before the District Judge, then notices were given to non-petitioner plaintiff and thereafter petition before High Court. All above could have been avoided by understanding the true reason for reaction of the Court by the learned counsel as well as by the Court about the reaction of the learned counsel. The learned

advocates are to be shock absorber in between litigant and the court and have equally important duty as of Court Officer and should feel rest assured that in such situation, no Court will harm the litigant.

In this case, one of the peculiar fact is that despite the fact that the adjournments was sought by the learned counsel for the applicant, due to his sickness and suffering from fever, the other advocate raised serious objection. In that situation, if the Court, after taking note of the earlier occasions of adjournments uttered some words that itself cannot be taken to be a view against the litigant.

It will be worthwhile to quote the passages from the judgment of this Court delivered in the case of D.K.Parihar (Supra). Paras No. 31, 32 and 33 read as under :-

> "31. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the Court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome

standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the Court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards or probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in society.

32. In Krishna Swami v. Union of India, (1992) 4 SCC 605 : (AIR 1993 SC 1407), it was held by the Hon'ble Supreme Court that the holder of office of the judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behaviour, both on and off the Bench, are normally high. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions is the guidelines for judicial conduct. The conduct that ends to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities.

33. To keep the stream of judicial clean and pure, the Judge must be endowed with sterling character impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher

> echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or to any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office-holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law."

On the basis of above observations of this Court as observed by the Supreme Court in Krishna Swami v. Union of India (Supra), learned counsel for the petitioner submitted that it is a fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done, is required to be kept in mind by all.

I need not to add in what has been observed for conduct of judicial officers. At the same time, no less standards are of an advocate than the standards of judicial officer. The advocate is also required to be a man of high integrity, honesty, having moral vigour ethical firmness, required to keep most exacting

standards of propriety in conducting the case and dealing with the courts. The standard and conduct of an advocate is required to be higher than that it may be of a layman and much above any litigant who may act unfairly, some times (not often) because of his stakes, greed or prejudice. In D.K.Parihar's case itself, this Court held that "every act or conduct or even error of judgment or negligent acts per se does not amount to misbehaviour." At this place, it will be appropriate to add that even during discussions and in consequence thereof loss of temper, because of the peculiar background or because of the spontaneous reasons, some unpleasant situation may arise but that itself cannot be reason to believe that the judicial officer will decide the case in hand, otherwise than in accordance with law and unfairly or will not do the justice. The advocate should separate himself from the litigants in drawing impression which may be taken by the litigant from such event in Court. This is the time where the advocate can properly guide the litigant and if needed, may show firmness while dealing with the litigant and develop a faith in the court of the litigants.

The justice is required to be done and also must be seen to have been done, does not mean that all strong actions of the Court are due to prejudice or any ill will of Courts. The able

Courts and strong bar jointly only can serve the cause of justice but not by showing their strength to each other.

In view of the above reasons and the facts of this case, I do not find any reason to transfer the case to any other Court. The Revision Petition (transfer petition) is, therefore, dismissed.

(PRAKASH TATIA), J.

scd.